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Frontier Airlines, Inc., Republic Airways Holdings, Inc.,
Roger Sorenson

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

KHAN MICHAEL ORDONEZ,

Plaintiff,

v.

FRONTIER AIRLINES, REPUBLIC
AIRWAYS HOLDINGS, ROGER
SORENSEN,

Defendants.

CASE NO. C 13-00940 MEJ

**DEFENDANTS FRONTIER AIRLINES, INC.,
REPUBLIC AIRWAYS HOLDINGS, INC.
AND ROGER SORENSEN'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THEIR
MOTION TO DISMISS PLAINTIFF KHAN
MICHAEL ORDONEZ'S COMPLAINT
AGAINST ROGER SORENSEN AS A SHAM
JOINDER**

[Fed. R. Civ. P. 12(b)(6)]

Date:	April 11, 2013
Time:	10:00 a.m.
Courtroom:	B
Mag. Judge:	Hon. Maria-Elena James
Removal Filed:	March 1, 2013
Trial Date:	Not Set

I. INTRODUCTION

Khan Michael Ordonez's ("Mr. Ordonez") employment with Frontier Airlines, Inc. ("Frontier") was terminated when he failed to show up for work for several days, and failed to provide the required medical certification of a serious health condition in support of his absences or leave under the California Family Rights Act ("CFRA"), despite several requests from Frontier to provide such information. Arising out of the termination of his employment with Frontier, Mr.

1 Ordonez has filed this present removed action against Frontier, Republic Airways Holdings, Inc.
 2 (“Republic”; Frontier is a wholly-owned subsidiary of Republic), and Roger Sorensen (“Mr.
 3 Sorensen”), an individual who had supervisory authority over Mr. Ordonez during Mr. Ordonez’s
 4 employment with Frontier in 2010. See Complaint, ¶4.

5 Mr. Ordonez has alleged two nonviable claims for relief against Mr. Sorensen, whose
 6 joinder to this action is a sham as set forth in Defendants’ notice of removal filed with the Court
 7 on March 1, 2013. This motion to dismiss is directed at the first (CFRA retaliation) and sixth
 8 (CFRA harassment) claims for relief against Mr. Sorensen based on the lack of liability of non-
 9 employer individual defendants on claims under the CFRA for retaliation and harassment.¹

10 Because Mr. Ordonez fails to state a claim upon which relief can be granted under either
 11 his retaliation or harassment claims under the CFRA, his complaint against Mr. Sorensen should
 12 be dismissed in its entirety, and with prejudice.

13 II. STANDARD FOR A MOTION TO DISMISS

14 Federal Rule of Civil Procedure 12(b)(6) permits a motion to dismiss where the complaint
 15 “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A court may
 16 dismiss a complaint under Rule 12(b)(6) either for lack of a cognizable legal theory or for the
 17 absence of sufficient facts under a cognizable legal theory. *Robertson v. Dean Witter Reynolds,*
 18 *Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). Legal conclusions pled in a complaint need not be taken
 19 as true merely because they are cast in the form of factual allegations. *Western Mining Council v.*
 20 *Watt*, 643 F.2d 618, 624 (9th Cir. 1981). A court may dismiss a complaint if it is vague,
 21 conclusory, or fails to set forth any material facts in support of the allegations. *North Star Intl. v.*
 22 *Arizona Corp. Comm.*, 720 F.2d 578, 583 (9th Cir. 1983).

23 Indeed, the Supreme Court has confirmed that in order to survive a motion to dismiss, a
 24 complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that
 25

26 ¹ The sixth claim for relief in the Complaint is mislabeled in its caption as age harassment under
 27 the Fair Employment & Housing Act, but there are no age allegations in the complaint
 28 whatsoever, and the body of the sixth claim for relief alleges harassment under the CFRA only.

1 is plausible on its face.’’ *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp.*
 2 *v. Twombly*, 550 U.S. 544, 570 (2007). Put simply, the plaintiff must allege facts that, when
 3 viewed from a common-sense judicial perspective, not only make a claim possible, but also
 4 plausible. *Id.* at 1950. A complaint that only offers “labels and conclusions” or “a formulaic
 5 recitation of the elements of a cause of action” will not do. *Id.* at 1949.

6 **III. AS A MATTER OF LAW, MR. SORENSEN CANNOT BE INDIVIDUALLY**
 7 **LIABLE FOR PLAINTIFF’S CLAIMS FOR RETALIATION AND**
 8 **HARASSMENT UNDER THE CFRA**

9 It is well-settled under California law that no liability exists under the CFRA against
 10 individual defendant employees who are not plaintiff’s employer, including claims for retaliation
 11 and harassment. See *Corrales v. United Rentals, Inc.*, 2010 WL 2380875 (C.D. Cal. 2010);
 12 *McLaughlin v. Solano County*, 2008 WL 2977959 (E.D. Cal. 2008), citing *Miskuski v. Crescent*
 13 *Heights of America, Inc.*, 2007 WL 918637 (S.D. Cal. 2007). There is no individual (or supervisor)
 14 liability under the CFRA; only employers who directly employ 50 or more persons are liable under
 15 the CFRA. See California Government Code sections 12945.2(c)(2)(A) & 12945.2(a); see also
 16 *Herrera v. Pepsi Bottling Group, Inc.*, 2010 WL 4483742 (E.D. Cal. 2010); *Corrales*, 2010 WL
 17 2380875. Mr. Sorensen did not personally employ anyone, but was merely a supervisor. See
 18 Complaint, ¶4.

19 Because Mr. Sorensen is an individual defendant, he cannot, as a matter of law, be liable to
 20 Mr. Ordonez as alleged in this action for retaliation and harassment under the CFRA. Further, Mr.
 21 Ordonez’s joinder of Mr. Sorensen, who is a citizen of California, as a named defendant in the
 22 Complaint, is a sham or fraudulent joinder to attempt to destroy diversity. See *Ritchey v. Upjohn*
 23 *Drug Co.*, 139 F.3d 1313, 1318-1319 (9th Cir. 1998); *McCabe v. General Foods Corp.*, 811 F.2d
 24 1336, 1339 (9th Cir. 1987); Defendants’ notice of removal filed with the Court on March 1, 2013.

25 Accordingly, the motion to dismiss on Mr. Ordonez’s first and sixth claims for relief against
 26 individual defendant Mr. Sorensen under the CFRA (for retaliation and harassment) must be
 27 granted, and the complaint against him dismissed with prejudice.

28 ///

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their motion to dismiss Mr. Ordonez's complaint against Mr. Sorensen in its entirety, and dismiss the complaint with prejudice, for failure to state a claim upon which relief can be granted.

Dated: March 6, 2013

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